

(ii) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when

abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103-354 140-4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35692, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18678, Apr. 30, 1992; 58 FR 48288, Sept. 15, 1993; 59 FR 25801, May 18, 1994; 68 FR 7698, Feb. 18, 2003]

§§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with subpart A of part 1965 of this chapter and/or subpart S of part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with subpart A of part 1962 of this chapter and/or subpart S of part 1951 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

§§ 1943.45–1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART A OF PART 1943—
FARMERS HOME ADMINISTRATION OR
ITS SUCCESSOR AGENCY UNDER PUBLIC
LAW 103-354 LOANS TO
ENTRYMEN ON UNPATENTED PUBLIC
LANDS

I. *GENERAL*: This exhibit provides additional policies and procedures applicable to (1) insured Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 loans to homestead and desertland entrymen which are to be secured by real estate, and (2) taking of real estate mortgages on entries to secure Farm Ownership, Soil and Water, Individual Recreation, Operating, Emergency, Single Family Housing, and Farm Labor Housing loans in connection with loan making and servicing.

A. *Authority*. The authorizations contained in this exhibit clarify security and servicing for loans to entrymen and are based on Public Law 361. Attachment 1 is a Memorandum of Understanding between the Department of the Interior and the Department of Agriculture and outlines the general procedures to be followed when loans are made to entrymen. Reference to Guaranteed Loans in the Memorandum of Understanding is not applicable.

B. *Cooperation Between the Department of Agriculture and the Department of the Interior*. The extension of financial assistance and taking of real estate mortgages authorized in paragraph I A will be facilitated through the cooperation of the FmHA or its successor agency under Public Law 103-354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), as provided in the Memorandum of Understanding.

C. *Special Policies Applicable to Dwellings, Land Improvement and Ownership*. An FmHA or its successor agency under Public Law 103-354 loan will not be made to an applicant who lacks the capital or who cannot obtain credit to provide (1) any required habitable dwellings within the statutory period specified in paragraph I D for the establishment of residence, and (2) land development sufficient for success but in no case less than that necessary to meet the entry requirements. The Notice of Allowance of Entry is adequate to meet the ownership requirement until the patent is issued.

D. *Patent Requirements*. All entrymen will be expected to keep in contact with appropriate officials of the BLM, and BR and comply with pertinent laws and regulations of these Agencies relating to the issuance of patents for homestead or desertland entries. When applicable, reclamation proof must be filed by the borrower at the earliest possible date. Likewise, FmHA or its successor agency under Public Law 103-354 personnel concerned with making and securing FmHA or its successor agency under Public Law 103-

354 loans to entrymen should acquaint themselves with BLM and BR representatives and keep informed of their regulations relating to the issuance of patents for homestead or desertland entries, including but not limited to the following:

1. *RESIDENCE AND DEVELOPMENT REQUIREMENTS*. A homestead entryman must establish residence upon the tract entered within 6 months after date of the entry unless an extension of time is allowed and must maintain a residence there for 3 years. The entryman should notify the authorized officer of the BLM upon establishing residence. When an FmHA or its successor agency under Public Law 103-354 loan is made for any purpose, the requirements of the applicable FmHA or its successor agency under Public Law 103-354 regulations must be met. Likewise any residence or development requirements of BLM or BR will be met.

2. *FINAL PROOF*. Specific requirements for final proof for homestead entrymen is found in 43 CFR 2515.7 and final proof for desertland entrymen is found in 43 CFR 2521.6.

a. *Homestead Entryman*: Final proof must be filed within 5 years from the date of allowance of entry. A patent will not be issued until the entryman has submitted final proof. Final proof must show that (1) a habitable dwelling is on the land at the time proof is submitted, (2) residence requirements have been met, (3) the improvements are of such character as to show good faith, and (4) the entryman is a citizen of the United States. When the entryman is ready to submit final proof the entryman should notify the BR and request instructions regarding the procedure to be followed.

b. *Desertland Entryman*: Final proof must be made within 4 years from the date of entry. General requirements of the BLM that must be met include: (1) Filing a map at the initiation of the entry showing the method of irrigation and the proposed source of water supply, (2) an annual expenditure for 3 years of not less than \$1 for each acre in the necessary development of the land, (3) filing a map at the end of the third year showing the character and extent of improvements, and (4) yearly proof of expenditures containing statements of two or more credible witnesses who have knowledge that the expenditures were made.

The County Supervisor should consult the BLM official for any additional requirements of the entryman such as preparing a notice of intention to make final proof, publication of final proof and submission of final proof.

3. *RECLAMATION PROOF*. Reclamation proof for homestead entryman may be submitted with, or at any time after, the submission of homestead proof. In addition to the final homestead proof mentioned in paragraph I D 2, the filing of reclamation proof is required as a condition for obtaining a patent to any entry within a reclamation

project. Reclamation proof must show reclamation and cultivation of at least one-half of the irrigable area in the entry for 2 years immediately preceding the date of submission of proof and the payment of all reclamation charges due at that time. Reclamation proof, in proper form, must be submitted to the official in charge of the project accompanied by the payment of final homestead commissions.

II. *LOAN PROCESSING*: When making an FmHA or its successor agency under Public Law 103-354 loan to be secured by the entryman's land, existing FmHA or its successor agency under Public Law 103-354 policies, procedures, and loan authorities applicable to the particular type of loan will be met, except as follows:

A. *Applications*. 1. *APPLICATIONS FROM ENTRYMEN NOT IN A FEDERAL RECLAMATION PROJECT*. An application for an FmHA or its successor agency under Public Law 103-354 loan from an entryman with respect to public land not within a Federal reclamation project will be considered only after the entryman has selected a farm and received the Notice of Allowance of Entry from BLM. The original or a copy of the document showing allowance of entry must be attached to Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services."

2. *APPLICATIONS FROM ENTRYMEN IN A FEDERAL RECLAMATION PROJECT*. An application for an FmHA or its successor agency under Public Law 103-354 loan from an entryman with respect to public land within a Federal reclamation project will not be considered until after the entryman has received a Certificate of Eligibility from BR and has selected a farm. If at the time of making application the entryman has received the Notice of Allowance of Entry from BLM, he will attach the original or a copy of such document to Form FmHA or its successor agency under Public Law 103-354 410-1. If the entryman has not received the Notice of Allowance of Entry, a copy of the Certificate of Eligibility must be attached to the FmHA or its successor agency under Public Law 103-354 application. However, the docket will not be approved until the original or a copy of the document showing Notice of Allowance of Entry has been received from the applicant and placed in the loan docket.

3. *SUPPLEMENTAL INFORMATION ON APPLICANT*. At the time of making application for an FmHA or its successor agency under Public Law 103-354 loan to be secured by real estate, the entryman may be requested to authorize the FmHA or its successor agency under Public Law 103-354 to obtain from BLM or BR any available information concerning the entryman's application for homestead, desertland, or reclama-

tion entry for use by the FmHA or its successor agency under Public Law 103-354 in determining the entryman's eligibility for the loan as provided in the Memorandum of Understanding.

B. *Special Items in Development of Loan Dockets for Loans to be Secured by the Entryman's Land*. Loan dockets for loans to entrymen will be prepared and distributed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulations, except as modified by this paragraph.

1. *DEVELOPMENT PLAN*. An extra copy of Form FmHA or its successor agency under Public Law 103-354 1924-1, "Farm Development Plan" will be prepared and sent to BLM in each case. When the entryman's farm is located in a Federal reclamation project, any development items listed on Form FmHA or its successor agency under Public Law 103-354 1924-1 must be consistent with the overall plans for development of the reclamation project. Consequently, when Form FmHA or its successor agency under Public Law 103-354 1924-1 provides for the leveling of land or the installation of farm distribution and surface drainage systems another extra copy will be prepared and sent to the Reclamation Project Officer as soon as the County Supervisor determines that there is a reasonable likelihood that the loan will be made. If Form FmHA or its successor agency under Public Law 103-354 1924-1 conflicts with the overall BR plans for the development of the Federal reclamation project, officials of the BR will so advise the County Supervisor. The processing of the loan will not be delayed while awaiting such advice from BR but the FmHA or its successor agency under Public Law 103-354 loan will not be closed until Form FmHA or its successor agency under Public Law 103-354 1924-1 is revised to make it consistent with the BR plans. The County Supervisor will advise the Project Officer or Authorized Officer in writing whenever changes are made in the plans approved by the FmHA or its successor agency under Public Law 103-354.

C. *Title Clearance*. 1. The entryman applicant will be required to furnish and pay for a certified statement prepared by a qualified title examiner or abstractor or as otherwise required by a State supplement which will include finding with respect to any outstanding land leveling contracts and any other claims of any kind on record against the entry. This certified statement will be included in the loan docket. Where there is an outstanding land leveling contract, the applicant's copy of such contract also will be included in the loan docket and returned to the borrower when the loan is closed.

2. The State Director, upon advice from the Office of the General Counsel, will inform the County Supervisor regarding the

acceptable form of certified statement required in paragraph II C 1.

D. *Loan Closing.* Except as provided by this exhibit, FmHA or its successor agency under Public Law 103-354 loans will be closed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulation.

1. **REAL ESTATE MORTGAGE FORMS.** Whenever the entry is located within a Federal reclamation project two extra copies of Form FmHA or its successor agency under Public Law 103-354 1927-1, "Real Estate Mortgage," will be prepared. If the entry is not within a Federal reclamation project, one extra copy of the real estate mortgage will be prepared. After the loan has been closed, a conformed copy of the real estate mortgage will be sent to BLM and, if the entry is located in a Federal reclamation project, a conformed copy of the mortgage also will be sent to the BR. The entryman's serial number which appears on the original document showing Notice of Allowance of Entry will be typed on the original, and the conformed copies of the Mortgage for BLM and BR will indicate the date and place of recordation and the book and page numbers.

2. **COUNTY OFFICE RECORD OF ALLOWANCE OF ENTRY.** When the loan is closed a copy will be made of the original document showing Notice of Allowance of Entry for the borrower's county office case folder, unless a copy was furnished. The County Supervisor will sign the following certification which will be typed on this copy:

"I hereby certify that this is an exact copy of the Notice of Allowance of Entry issued by the BLM to _____ (Entryman's Name) residing at _____ (Entryman's Address)"

County Supervisor

When the original document showing allowance of entry is furnished, it will be returned to the borrower.

3. **ENTRIES REQUIRED ON MANAGEMENT SYSTEM CARDS.** Upon closing the loan, the County Supervisor will enter a notation on the borrower's Management System Card (Form FmHA or its successor agency under Public Law 103-354 405-1) as to the date when the borrower must submit final proof to the BLM in fulfillment of the requirements to obtain a patent. If residence has not been established, a notation also will be made on the Management System Card of the date such residence must be commenced. It will be the responsibility of the County Supervisor to follow through to see that the borrower completes these actions.

III. **MORTGAGE ON REAL ESTATE FOR ADDITIONAL SECURITY.** When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA or its successor agency under

Public Law 103-354, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in subpart A of part 1965 of this chapter (FmHA Instruction 465.1). In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in a Federal reclamation project, a copy of the mortgage also will be sent to the BR.

IV. **DEFAULT AND DISPOSAL OF UNITS:** The County Supervisor will coordinate with the local BLM and BR representatives and keep the State Director currently advised on any cases in default or where default is anticipated. The State Director will be guided by Attachment I and advice of the Office of the General Counsel in fulfilling FmHA or its successor agency under Public Law 103-354's responsibilities for disposal of any units on which a patent has not been issued. Units on which a patent has been issued will be serviced by applicable FmHA or its successor agency under Public Law 103-354 procedures.

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF THE INTERIOR RELATING TO FINANCIAL ASSISTANCE BY THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 TO ENTRYMEN ON PUBLIC LANDS

PART I—PURPOSE AND DEFINITIONS

A. *Purpose.* The purpose of this memorandum is to outline the general procedure to be followed by the Farmers Home Administration (FHA) or its successor agency under Public Law 103-354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), when FHA or its successor agency under Public Law 103-354 extends financial assistance to entrymen on unpatented public lands, including public land in reclamation projects.

B. *Definitions.* Unless otherwise indicated in this memorandum:

(1) The term *unit* will be used to describe an adequate family farm, less than adequate family farm, a portion of a farm or any other tract of land.

(2) The term *FHA* also includes its insured lenders and guaranteed lenders.

(3) The term *outstanding balance* includes (a) the unpaid indebtedness under the FHA or its successor agency under Public Law 103-354 mortgage, (b) any unpaid costs owed to BR for construction by it of a special distribution system to serve a unit where such costs have been allocated to the unit as a separate item, and (c) any portion of an SW association loan made by FHA or its successor agency under Public Law 103-354 for construction of a domestic water system to serve the unit and secured by a lien on the unit. It does not include any portion of an

SW association loan made by the FHA or its successor agency under Public Law 103-354 for construction of a domestic water system to serve the unit and not secured by a lien on the unit, nor project construction costs charged to the unit.

(4) Pub. L. 361, 81st Congress (7 U.S.C. 1006a and 1006b), is referred to as "Pub. L. 361." It applies to Farm Ownership (FO), Operating (OL), Soil and Water Conservation (SW) loans made to individuals and Recreation (RL) loans to individuals under the Consolidated Farm and Rural Development Act of 1972 (7 U.S.C. 1921) and prior laws. It does not apply to Emergency (EM) loans made under that act or prior laws, nor to Housing (RH) loans made under Title V of the Housing Act of 1949 (42 U.S.C. 1471), or to any other loans made or administered by FHA or its successor agency under Public Law 103-354.

(5) Pub. L. 419 (86 Stat. 675) amended Pub. L. 361 to add desertland entrymen as eligible for the same loans as indicated in (4) above.

(6) The term *Project Officer* refers to the BR Officer who may properly hold the requisite responsibility for the project or area in question.

(7) The term *authorized officer* refers to the BLM Officer to whom has been delegated the required responsibility for the area in question.

(8) The term *County Supervisor* means County Supervisor for FHA or its successor agency under Public Law 103-354.

(9) The term *State Director* means State Director for FHA or its successor agency under Public Law 103-354.

PART II—GENERAL PROVISIONS

A. FHA or its successor agency under Public Law 103-354 regulations will govern making and servicing FHA or its successor agency under Public Law 103-354 loans, including the taking of mortgages as additional security for existing FHA or its successor agency under Public Law 103-354 loans.

B. In connection with applications for FHA or its successor agency under Public Law 103-354 loans or credit sales to eligible applicants, the Project Officer of BR or the authorized officer of BLM, upon written request of the County Supervisor, will furnish the following:

1. Written consent to make the applicant an FHA or its successor agency under Public Law 103-354 loan or to secure an existing FHA or its successor agency under Public Law 103-354 loan.

2. Any information which BR or BLM has concerning the applicant, provided, in the case of BR information, the request has the following authorizations attached to it:

Date _____, 19____

I hereby authorize the Bureau of Reclamation to make available to the Farmers Home Administration or its successor agency under Public Law 103-354 any information

the Bureau may have concerning my transactions with it. This information may be used by the Farmers Home Administration or its successor agency under Public Law 103-354 in determining my eligibility and qualifications for a loan, and is to be treated as confidential.

(Type name of applicant below signature)

| | |
|--------------|-------------|
| signed _____ | (applicant) |
| signed _____ | (spouse) |

3. A statement of account, showing the applicant's outstanding balance if there is a debt owed to BR (principal balance, accrued unpaid interest, and daily interest accrual rate, any other charges and any unpaid special distribution system costs, and the amount, delinquent).

4. A report on any development and residence requirements which have not been completed and on eligibility of the unit for water, including full information on the status of any excess land.

5. Advice as to whether the applicant is in default because of failure to pay water charges, or because of breach of any other agreements with the Bureau of Reclamation.

C. A homestead or desertland entryman on public land not in a reclamation project may apply to the County Supervisor for an FHA or its successor agency under Public Law 103-354 loan when his entry has been allowed. The original or a copy of the Notice of Allowance of Entry from BLM must be attached to the application for a loan from FHA or its successor agency under Public Law 103-354. Upon request of the County Supervisor, the authorized officer of the BLM, to the extent applicable will furnish any information that office has with respect to the applicant entryman.

An applicant for a homestead on a reclamation project likewise may apply to the County Supervisor for an FHA or its successor agency under Public Law 103-354 loan when he has received from the BR a Certificate of Eligibility and has selected a unit. A copy of the Certificate of Eligibility must be attached to the application for a loan from the FHA or its successor agency under Public Law 103-354 unless the unit has been entered, in which case the Notice of Allowance of Entry will be attached to the application for a loan. Each application for such a loan filed by an entryman will be processed in substantially the same manner as other application of a similar character, including the preparation of the loan docket, certifications by the FHA or its successor agency under Public Law 103-354 County Committee, and approval by the duly authorized loan approving official. If any conflict exists between the development plans of FHA or its successor agency under Public Law 103-354

and BR or BLM, the difference must be reconciled prior to loan closing. A copy of the Notice of Allowance of the Entry will be required in the loan docket before a loan is closed.

D. Upon closing of a loan to an entryman, when real estate security is taken, the County Supervisor will send copies of the real estate mortgage to the authorized officer of BLM, and to BR if appropriate. The County Supervisor will indicate on the mortgage the date such instrument was filed for record and the entryman's homestead or desertland entry serial number. Copies of these instruments will serve as notification to BLM or BR that a loan has been made by FHA or its successor agency under Public Law 103-354 and may be used in connection with the servicing of such loans as indicated herein.

PART III—LOAN SERVICING

A. If the entryman-borrower repays his indebtedness in full to FHA or its successor agency under Public Law 103-354 before a patent is issued to him by BLM, the County Supervisor will promptly notify the BLM authorized officer of the release of the mortgage lien.

B. When final homestead or desertland entry proof or homestead proof and reclamation proof submitted by an entryman-borrower is accepted by the BLM and a patent is issued before BLM is notified of the full repayment of the indebtedness to FHA or its successor agency under Public Law 103-354, the patent issued will make reference to the FHA or its successor agency under Public Law 103-354 mortgage as follows:

"This patent is issued subject to the rights of the United States under a certain mortgage or deed of trust executed by _____ and _____ under date of _____, 19 ____, recorded in Book _____, Page _____ of the records of the Recorder of Deeds for _____."

In such cases, if the patent is issued to a person other than the mortgager or the purchaser at foreclosure of the mortgage, there shall also be inserted after the recital of recordation of the mortgage the following words: "Which the patentee assumes and agrees to pay."

C. Upon issuance of the patent to the entryman-borrower, the authorized officer of BLM will notify the State Director that the patent has been issued and mailed to the entryman-borrower. Upon such notification, the County Supervisor will advise the entryman-borrower to record the patent promptly in the real estate records in the county in which his unit is located, and will check the records to determine that the recordation has been accomplished. The issuance of the patent will terminate any further relationship between BLM and FHA or its successor agency under Public Law

103-354 insofar as the entryman-borrower is concerned.

D. In the event that an entryman-borrower has not submitted Final Proof within the statutory period from the date of allowance of his entry, BLM will send to the County Supervisor a copy of the Notice of Expiration of the statutory period of entry when it is mailed to the entryman-borrower. The copy of the notice will be used by the County Supervisor in urging the entryman-borrower to submit final proof with appropriate explanation of his failure to do so before the expiration of the statutory period.

PART IV—DEFAULTS

When an entryman-borrower is in default in the terms of his mortgage to FHA or its successor agency under Public Law 103-354, in complying with requirements to obtain a patent, or in meeting the requirements to make reclamation proof, the following procedures will apply:

A. *Default on Mortgage.* BLM will issue a decision canceling any entry upon which there is an FHA or its successor agency under Public Law 103-354 mortgage when so requested in writing by the State Director. FHA or its successor agency under Public Law 103-354 may request a cancellation whenever any default occurs in the terms, conditions, covenants, and obligations contained in the mortgage. Included among the terms, conditions, covenants, and obligations in the mortgage taken by FHA or its successor agency under Public Law 103-354 will be the provision that the entryman-borrower must comply with the legal and administrative regulations for the issuance of a patent and, if the entry is located in a reclamation project, with the legal and administrative regulations for making reclamation proof.

1. The State Director will furnish the authorized officer of BLM with an explanation of the need for cancellation. When the entry is located in a reclamation project, the State Director also will notify the BR Regional Director and furnish him with an explanation of the need for cancellation.

2. The BR Regional Director may request the State Director to reconsider the necessity for cancellation of the entry when (a) BR can furnish information which may not have been considered by FHA or its successor agency under Public Law 103-354, (b) there is an outstanding contract between BR and the entryman borrower for the repayment of charges for land leveling, or (c) the entryman-borrower has not made reclamation proof. If such a request is made, a copy will be furnished to the BLM which shall suspend action on the FHA or its successor agency under Public Law 103-354 request

until further notified by the FHA or its successor agency under Public Law 103-354. Ordinarily, BR will not request a reconsideration of the necessity for cancellation unless there appears to be a reasonable basis upon which a solution can be worked out so that the entryman-borrower may retain possession of his unit.

3. If BR does not ask the State Director to reconsider his request to cancel within 30 days, BLM will issue a decision cancelling the entry.

4. If BR asks for a reconsideration of the request to cancel, it will furnish the State Director immediately new information which it believes should be considered by FHA or its successor agency under Public Law 103-354 in reaching a decision. When FHA or its successor agency under Public Law 103-354 has reached a final decision, it will notify the BLM and the BR of the decision reached. Within 30 days after receiving notice of the final decision of the State Director that the entry should be canceled, BLM will notify the entryman-borrower of the cancellation of his entry in accordance with the usual procedure. A copy of the notice of the cancellation will be mailed to the State Director at the same time.

B. Default in Meeting Entry Requirements. If BLM proposes to take any action toward cancellation of an entryman-borrower's entry, it will notify the State Director and the BR Regional Director if the unit is located in a reclamation project, in writing at least 30 days before any action is commenced. The notification will be accompanied by an explanation as to why cancellation will be made. Within the 30-day period either or both FHA or its successor agency under Public Law 103-354 and BR may present any new information for the consideration of the BLM in reaching a decision to, or not to, cancel the entry. When BLM has reached a final decision, it will inform the State Director and the BR Regional Director.

C. Default in Meeting Reclamation Requirements. In the event BR intends to recommend cancellation of an entryman-borrower's entry, the Superintendent of the Reclamation Project will notify the State Director in writing at least 30 days before such recommendation is to be submitted to BLM for cancellation. The notification will be accompanied by an explanation as to why cancellation of entry is to be requested. FHA or its successor agency under Public Law 103-354 may request a reconsideration of BR's intended recommendation to cancel within the 30-day period and will furnish any new information which it believes should be considered by BR when reaching a final decision. When BR has reached a final decision, it will notify the State Director.

PART V—DISPOSAL OF UNITS AFTER CANCELLATION OR RELINQUISHMENT

After cancellation or relinquishment of an entry upon land on which FHA or its successor agency under Public Law 103-354 holds a mortgage, such land shall be opened to re-entry only to persons eligible for an original entry, and eligible for an FHA or its successor agency under Public Law 103-354 loan unless the FHA or its successor agency under Public Law 103-354 Loan is paid in full. Any unit disposed of hereunder shall be subject to the outstanding balance owed to FHA or its successor agency under Public Law 103-354 and BR, or to that portion of the outstanding balance as agreed upon by the FHA or its successor agency under Public Law 103-354 and BR or BLM, as appropriate, if the entryman is eligible for an FHA or its successor agency under Public Law 103-354 loan.

A. One Year Limit. Under Pub. L. 361, BLM or BR can permit a new entry only during one year after cancellation or relinquishment of the old entry where the FHA or its successor agency under Public Law 103-354 mortgage is subject to Pub. L. 361 (FO, OL, and SW). In other cases such as RH and EM, the one-year limitation does not apply, but BLM or BR will nevertheless arrange for a new entry within the one-year period if it is practicable to do so.

B. Custody and Expenses. While BLM or BR has disposal authority it will assume custodial responsibility for the unit, but the County Supervisor and the Project Officer will determine the actions necessary to protect the interests of both FHA or its successor agency under Public Law 103-354 and BLM or BR. Any expenses incurred for protection of FHA or its successor agency under Public Law 103-354's interest will be paid by FHA or its successor agency under Public Law 103-354 and added to the mortgage debt.

C. Disposal of Units—1. Within a Reclamation Project. As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103-354 will make an appraisal to determine the value of the property and will report its findings to BR on appropriate FHA or its successor agency under Public Law 103-354 appraisal forms. The State Director and the BR Regional Director after receipt of the report by BR will jointly participate in determining the amount of indebtedness owed to the United States which shall be required in accordance with the existing law to be paid and the terms under which repayment will be made.

a. BR will, thereafter, for that particular unit, proceed to inform the public of the availability of the unit in accordance with its established procedures. However, before BR issues a Certificate of Eligibility to any applicant for re-entry it will submit to the County Supervisor (a) a list of the names of

the applicants who can qualify for a Certificate of Eligibility and the order in which such applicants shall be considered, and (b) the information submitted by each of the qualified applicants in support of his application for the entry.

b. The County Supervisor and the County Committee will examine the list and the information to determine which of the applicants are eligible for an FHA or its successor agency under Public Law 103-354 loan. The list of any documentary information furnished will be returned to BR with a written statement setting forth the names in the list which are eligible for FHA or its successor agency under Public Law 103-354 assistance. Upon receiving such information from FHA or its successor agency under Public Law 103-354, BR will proceed to select, in accordance with established procedures, from among the applicants determined to be eligible for a Certificate of Eligibility and an FHA or its successor agency under Public Law 103-354 loan, one applicant but not to exceed two alternate applicants, to whom the unit may be awarded upon qualifying to assume the indebtedness.

c. BR will issue a Certificate of Eligibility to the selected applicant. The Certificate of Eligibility will be sent to the FHA or its successor agency under Public Law 103-354 County Supervisor who will instruct the applicant to file his Certificate of Eligibility and application for entry with BLM which will issue a Notice of Allowance of Entry if the applicant is qualified to make entry. The applicant will be allowed to occupy the unit when he has received the Notice of Allowance of Entry and has completed arrangements to assume the required amount of indebtedness owed to FHA or its successor agency under Public Law 103-354 or to refinance such indebtedness. FHA or its successor agency under Public Law 103-354 will send a copy of the assumption agreement or note and mortgage, if any, executed by the new occupant to BR and BLM.

d. FHA or its successor agency under Public Law 103-354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

2. *Units Not Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103-354 will make an appraisal to determine the value of the property and to determine the amount of indebtedness owed on FHA or its successor agency under Public Law 103-354 loans that is to be paid by the new entryman. The FHA or its successor agency under Public Law 103-354 will report the amount of the FHA or its successor agency under Public Law 103-354 debt to be assumed to the BLM.

a. The BLM will, thereafter, for that particular entry, proceed to inform the public of

the availability of the land in accordance with its established procedures. BLM will, following the opening of the land to application, submit to the County Supervisor (a) a list of the names of the applicants who can qualify for the allowance and the order in which such applicants shall be considered, and (b) the information submitted by each of the applicants in support of his application.

b. Thereafter the FHA or its successor agency under Public Law 103-354 will select from the list the first applicant for the entry who can qualify for an FHA or its successor agency under Public Law 103-354 loan.

c. FHA or its successor agency under Public Law 103-354 will then notify BLM of the applicant selected. The authorized Officer will, as soon as possible after notification, issue the Notice of Allowance. The Allowance of Entry or an attachment thereto will show that entry is conditioned upon payment or assumption of the FHA or its successor agency under Public Law 103-354 debt. A copy of appropriate notice will be mailed to the State Director.

d. Upon receipt of the Notice of Allowance of Entry by the applicant, FHA or its successor agency under Public Law 103-354 will instruct him to occupy the unit and will complete arrangements for him to assume or refinance the indebtedness or the part thereof determined to be within the value of the property. FHA or its successor agency under Public Law 103-354 will send a copy of the assumption agreement or note and the mortgage, if any, executed by the new occupant to BLM.

e. FHA or its successor agency under Public Law 103-354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

D. *Disposal of Units By Farmers Home Administration or its successor agency under Public Law 103-354.* 1. If no entry is allowed within one year after cancellation or relinquishment of a prior entry on which FHA or its successor agency under Public Law 103-354 holds a mortgage and the property was security for an FHA or its successor agency under Public Law 103-354 loan subject to Pub. L. 361 even though it also was security for a loan not subject to that law, FHA or its successor agency under Public Law 103-354 will dispose of the unit in accordance with the FHA or its successor agency under Public Law 103-354 regulations. If the unit is located on a reclamation project, such disposition shall be subject, however, to outstanding reclamation charges on the land due the United States.

2. If the property cannot be sold immediately, the FHA or its successor agency under Public Law 103-354 will arrange for a lease or caretaker agreement as necessary to protect the Government's interests.

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3. When FHA or its successor agency under Public Law 103-354 prepares to sell a unit, it will also advise BLM or BR, as appropriate, of the name of the purchaser and will request issuance of a patent to the purchaser. If the unit is in a reclamation project, BR will furnish, as soon as possible to FHA or its successor agency under Public Law 103-354, information concerning any outstanding reclamation charges on the land due the United States.

4. The sale may be for cash or on credit. In the event the sale is on credit, FHA or its successor agency under Public Law 103-354 will furnish a copy of the mortgage to BLM or BR, as appropriate, which shall make reference, in any patent issued thereafter, to the outstanding mortgage of FHA or its successor agency under Public Law 103-354.

This memorandum of understanding supercedes the earlier memorandum of understanding signed on February 17, 1950, and March 25, 1950, respectively, by the Secretaries of Agriculture and Interior.

Approved:

JACK O. HORTON,
Assistant Secretary of the Interior.

Date: October 22, 1974.

Approved:

WILLIAM ERWIN,
Assistant Secretary of Agriculture.

Date: December 16, 1974.

[43 FR 55895, Nov. 29, 1978, as amended at 51 FR 4136, Feb. 3, 1986; 52 FR 8035, Mar. 13, 1987; 56 FR 67481, Dec. 31, 1991]

**EXHIBIT B TO SUBPART A OF PART 1943—
TARGET PARTICIPATION RATES FOR
FARMERS HOME ADMINISTRATION
(FMHA) OR ITS SUCCESSOR AGENCY
UNDER PUBLIC LAW 103-354 DIRECT
FARM OWNERSHIP (FO) LOANS TO
MEMBERS OF SOCIALLY DISADVANTAGED GROUPS**

I. General

The Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 is statutorily required to establish target participation rates for providing direct Farm Ownership (FO) loan funds to members of socially disadvantaged groups. These rates are established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds to purchase suitable farmland. The target participation rate established for each state, and each county within the state, is based on the proportion of minority rural population to the total rural population in the state, and for each county within the state.

II. Implementation Responsibilities

States will meet their target participation rates in use of direct FO loan funds as provided in this exhibit. The targeted portion of a state's fiscal year direct FO allocation, as outlined in exhibit A of subpart L of part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

III. Other Information

The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds to counties having the larger socially disadvantaged population.

TOTAL U.S. PARTICIPATION RATE

| State | Target Participation rate (percent) |
|----------------------|-------------------------------------|
| Alabama | 21 |
| Alaska | 34 |
| Arizona | 39 |
| Arkansas | 13 |
| California | 20 |
| Colorado | 11 |
| Connecticut | 3 |
| Delaware | 17 |
| Florida | 14 |
| Georgia | 20 |
| Hawaii | 68 |
| Idaho | 6 |
| Illinois | 2 |
| Indiana | 1 |
| Iowa | 1 |
| Kansas | 3 |
| Kentucky | 3 |
| Louisiana | 25 |
| Maine | 1 |
| Maryland | 14 |
| Massachusetts | 2 |
| Michigan | 3 |
| Minnesota | 2 |
| Mississippi | 37 |
| Missouri | 2 |
| Montana | 8 |
| Nebraska | 2 |
| Nevada | 12 |
| New Hampshire | 1 |
| New Jersey | 8 |
| New Mexico | 57 |
| New York | 3 |
| North Carolina | 21 |
| North Dakota | 5 |
| Ohio | 2 |

TOTAL U.S. PARTICIPATION RATE—Continued

| State | Target Participa- tion rate (percent) |
|----------------------|--|
| Oklahoma | 12 |
| Oregon | 5 |
| Pennsylvania | 2 |
| Rhode Island | 2 |
| South Carolina | 34 |
| South Dakota | 9 |
| Tennessee | 6 |
| Texas | 22 |
| Utah | 7 |
| Vermont | 1 |
| Virginia | 2 |
| Washington | 7 |
| West Virginia | 3 |
| Wisconsin | 2 |
| Wyoming | 7 |
| U.S. Total | 10 |

[57 FR 19524, May 7, 1992]

Subpart B—Direct Soil and Water Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35706, Sept. 15, 1988, unless otherwise noted.

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent direct Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103-354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103-354 employee. See exhibit A of subpart A of this part for making SW loans to entrymen on unpatented public lands. See subpart R of part 2000 of this chapter (available in any FmHA or its successor agency under Public Law 103-354

office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA or its successor agency under Public Law 103-354.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 227, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993]

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA or its successor agency under Public Law 103-354 assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with subpart B of part 1924 of this chapter.

§ 1943.54 Definitions.

Additional security. Any security beyond that which is required to adequately secure the loan.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103-354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for SW loan assistance in accordance with § 1943.62 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day